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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,558	07/25/2003	Ganesh Chandra Deka	18208	3392

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EXAMINER

SPERTY, ARDEN B

ART UNIT PAPER NUMBER

1771

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,558

Applicant(s)

DEKA ET AL.

Examiner

Arden B. Sperty

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Telephonic Election 12/16/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 36 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/31/03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

NON-FINAL ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-24, 36, 37, drawn to a nonwoven web, classified in class 442, subclass 327.
 - II. Claims 25-35, drawn to a method of making a nonwoven web, classified in class 28, subclass 100.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process can be used to make a product with a fuzz-on-edge value greater than 1.0 mm/mm.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Robert Ambrose on 12/16/04, a provisional election was made **with** traverse to prosecute the invention of a nonwoven web, claims

1-24, 36 and 37. Affirmation of this election must be made by applicant in replying to this Office action. Claims 25-35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-24, 36, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6169045 to Pike et al.

The Pike reference teaches a nonwoven web formed of drawn, crimped fibers. Materials for the web include a variety of thermoplastic polymers (col. 4, lines 48+), including those claimed. Conjugate fibers (col. 8, lines 8-12), including those comprising polypropylene and polyethylene, are taught (col. 7, lines 6-7). The product has the same density as the claimed invention (col. 2, lines 61-64). The reference further teaches a multilayer construction, formed of layers having different densities (col. 7, lines 50-61), meeting the limitations of claims 14-24. The drawn, crimped fibers are deposited onto a

continuous forming surface, assisted by a vacuum device. The web is bonded in a through-air bonder. The process is described at column 6, lines 34+.

While the reference is silent with respect to the claimed surface roughness and “fuzz-on-edge” value, the properties are inherently present since the reference teaches the same materials, forming the web according to the same process, and having the same density. Discovering new properties in a known product does not constitute “novelty.”

Claim Rejections- 35 USC 102/103

8. Claims 1-13 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 USC 103(a) as obvious over US 5605749 to Pike et al.

The reference teaches a nonwoven pad produced from a nonwoven web containing crimped, spunbond conjugate fibers, the web having a density meeting the limitations of claims 7 and 11 (col. 3, lines 26-50). A web of continuous fibers is taught at column 4, lines 53-67). Thermoplastic materials for the conjugate fibers include polyolefins, polyamides, and others (col. 5, lines 49+). The abrasion resistance of the web is taught at column 5, lines 26-28. The low lint property (col. 5, lines 44-47) is seen to anticipate the claimed “fuzz-on-edge” property. The burden is upon Applicant to prove by declaration or otherwise that the web taught by the reference does not exhibit the same or equivalent “fuzz-on-edge” value as claimed by Applicant. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed “fuzz-on-edge” value would obviously have been provided by preparing the web in accordance with the specification and the web’s intended use. See *In re Best*, 195 USPQ 433 as to the providing of this rejection under

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35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 1-13 and 36 are rejected as being anticipated by or obvious over the cited reference.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arden B. Sperty whose telephone number is (571)272-1543. The examiner can normally be reached on M-Th, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571)272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Arden B. Sperty
Examiner
Art Unit 1771

December 31, 2004


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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